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Brooke Kuhl  
General Attorney

BNSF Railway Company

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Suite 300  
Missoula, MT 59801  
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April 11, 2014

Ms. Sharon Abendschan (8ENF-RC)  
U.S. Environmental Protection Agency -Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

RE: **BNSF RAILWAY'S SUPPLEMENTAL RESPONSE TO EPA REQUEST  
FOR INFORMATION PURSUANT TO 104(e) OF CERCLA  
FOR THE SMURFIT-STONE MILL SITE (SSID #A804)**

Dear Ms. Abendschan:

BNSF Railway Company ("BNSF") supplements its prior response to the CERCLA § 104(e) request from United States Environmental Protection Agency Region 8 ("EPA") to include information and documents discovered and identified since BNSF's initial response. This supplemental response is subject to the same reservations set forth in BNSF's initial response. BNSF hereby supplements its responses as follows:

**Supplemental Response to Request No. 1:**

In addition to the individuals previously identified as having been consulted in BNSF's search for records responsive to EPA's requests, John Sims assisted in locating the attached documents.

John Sims  
Paralegal  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, TX 76131  
817-352-2376

Mr. Sims may be contacted through BNSF counsel.

### **Supplemental Response to Request No. 6:**

Although BNSF has found no records to suggest that it ever had an ownership interest in the track owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, it has located a 1978 track sharing agreement that accompanies this supplement. See November 13, 1978 Track Sharing Agreement between Burlington Northern, Inc. and Chicago, Milwaukee, St. Paul and Pacific Railroad Company. The Track Sharing Agreement was cancelled February 14, 1986. See Burlington Northern Railroad Contract No. 1690 dated February 14, 1986 cancelling the February 15, 1979 agreement between Burlington Northern Railroad Company and Chicago, Milwaukee, St. Paul and Pacific Railroad Company covering joint use of 1805 TF to serve Champion International.

Since its initial Response, BNSF has located additional industrial track agreements relating to the mill and supplements its prior response by identifying the following documents:

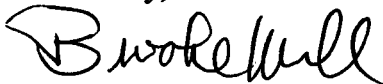
- July 15, 1957 Industrial Track Agreement between Northern Pacific Railway Company and Waldorf Paper Products Company of Montana.
- June 13, 1961 Industrial Track Agreement between Northern Pacific Railway Company and Waldorf-Hoerner Paper Products Company, Inc.
- March 12, 1969 Industrial Track Agreement between Northern Pacific Railway Company and Hoerner Waldorf Corporation of Montana.
- December 7, 1970 Industrial Track Agreement between Burlington Northern, Inc. and Hoerner-Waldorf Corporation (BN 518 with exhibit)
- December 13, 1971 Industrial Track Agreement between Burlington Northern, Inc. and Hoerner Waldorf Corporation (BN 1492)

### **Supplemental Response to Request No. 10:**

A document suggesting that M&S Construction Company performed work at the site for the Northern Pacific has been identified and accompanies this supplement. The document is dated November 9, 1956 and purports to be a contract for grading for sidings and spur track near Mile Post 132, between DeSmet and Frenchtown, Montana.

Please contact me if you have any questions regarding BNSF's initial or supplemental responses to USEPA's requests.

Sincerely,

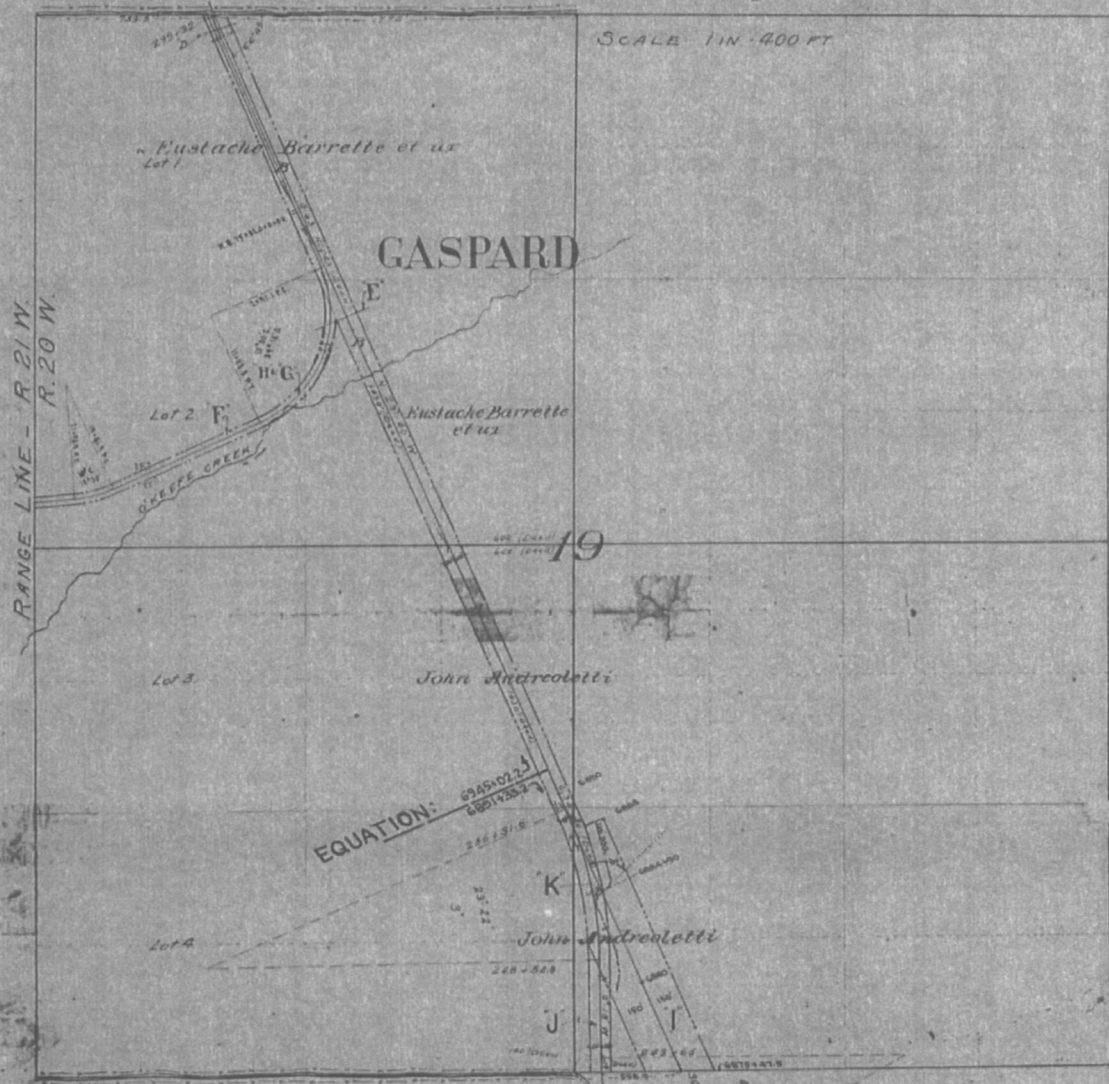


Brooke Kuhl

ENCLOSURES

cc: Mark Engdahl

N. P. R. R.  
N. P. & Mont. R. R. Right of Way Plat  
State of Montana County of Missoula  
Township 14 N Range 20 W of Mont. Prin Meridian  
Missoula to Idaho Bdy No. 6



	Dist No.	Grantor	Title	Acres	Date	When and where recorded	Condition, etc.
A	10	John Andreolotti et ux	Quit Claim	6.25	Sept 12 1889	Sept 15 1889 Book D p 326	None filed and CHAS. H. HARRISON EXCHANGES RECORD June 1, 1891
B	11	Eustache Barrette et ux		6.25	Sept 13 1889	Sept 16 1889 Book D p 368	do.
C	100	N. P. & M. R. R.			Dec 31 92	April 19 1893 - 7 - 129	6th tract and Lot 1.
D	280	N. P. & M. Co. To Gascoigne & Son	Permit		June 14 1894		Location from Dutch King 1894 100.0' with 100' in 1894.
E	318	HARRY CO. TO E. STEPHENSON	do		May 12 1898		1st Dutch King R.R. to N.P. & M. Co. File 5342
F	458	Phillip L. Lattin et al To N. P. R. R. Co	War Deed		Feb 8 1897	Mar 22 1897 Vol 104 Deeds p 185	50' strip for spur track in S. 1/4 Sec 18
G	459	Walden & Sons Trunk Co.	Ind. Trunk Rpt.		July 15 1897	Sept 18 1897 Vol 104 Deeds p 185	Corr. const. ch. of spur track
H	459	do	do		do	Sept 18 1897 Vol 104 Deeds p 185	do do do do
I	524	Dutch King R.R. Co. To N. P. & M. R. R. Co.	Joint track and Road Order of Condemnation		1898 6 1898		Spur to Gas strip of main 100' in S. 1/4 Sec 18, LARSEN 100' in 1898
J	531	N. P. & M. Co. To L. L. Lattin and Phillip Lattin & Son et al. Lattin and Son et al.	do		1898 10 1898	1898 10 1898	Loc. 100' from N.P. & M. Co. to L. L. Lattin & Son et al.
K	536	Walden & Sons Trunk Co. To N. P. R. R. Co.	do		1898 10 1898	1898 10 1898	Spur to Gas strip of main 100' in S. 1/4 Sec 18, LARSEN 100' in 1898
L							
M							

## N. P. R.

Coeur d'Alene Line Right of Way Plat  
 State of Montana County of Missoula  
 Section 24 Township 14 N. Range 21 W. of Mont. Prin. Meridian

Scale 400 ft. 1 Inch

Note: Boundary of Right of Way denoted thus



Deed No.	Grantor	Grantee	Title	Acres	Date	When and Where Recorded	Brief Description	Cor. File	R/W Memo
A	497	Missoula County	H. P. Ry. Co.	Easement	Jan. 8, 1901	Apr. 15, 1901 Vol. 292 Deeds P. 28	50 ft. strip across Mullan Road in NW 1/4 Sec. 24	11075	197/97
B	498	Waldorf Paper Products Co.	do.	Ind. Tel. Right	July 15, 1907	Superceded by Deed 592 & below	City cons'l. etc. of spur track	do.	
C	500	Henry Kramer et al.	do.	Wid. Deed	July 15, 1907	Aug. 17, 1907 Vol. 292 Deeds P. 983	50 ft. strip across SPN for spur track	do.	168/77
D	499 &	Waldorf Paper Products Co.	do.	Ind. Tel. Right	July 15, 1907	Ind. Tel. cons'l. A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-16, A-17, A-18, A-19, A-20, A-21, A-22, A-23, A-24, A-25, A-26, A-27, A-28, A-29, A-30, A-31, A-32, A-33, A-34, A-35, A-36, A-37, A-38, A-39, A-40, A-41, A-42, A-43, A-44, A-45, A-46, A-47, A-48, A-49, A-50, A-51, A-52, A-53, A-54, A-55, A-56, A-57, A-58, A-59, A-60, A-61, A-62, A-63, A-64, A-65, A-66, A-67, A-68, A-69, A-70, A-71, A-72, A-73, A-74, A-75, A-76, A-77, A-78, A-79, A-80, A-81, A-82, A-83, A-84, A-85, A-86, A-87, A-88, A-89, A-90, A-91, A-92, A-93, A-94, A-95, A-96, A-97, A-98, A-99, A-100, A-101, A-102, A-103, A-104, A-105, A-106, A-107, A-108, A-109, A-110, A-111, A-112, A-113, A-114, A-115, A-116, A-117, A-118, A-119, A-120, A-121, A-122, A-123, A-124, A-125, A-126, A-127, A-128, A-129, A-130, A-131, A-132, A-133, A-134, A-135, A-136, A-137, A-138, A-139, A-140, A-141, A-142, A-143, A-144, A-145, A-146, A-147, A-148, A-149, A-150, A-151, A-152, A-153, A-154, A-155, A-156, A-157, A-158, A-159, A-160, A-161, A-162, A-163, A-164, A-165, A-166, A-167, A-168, A-169, A-170, A-171, A-172, A-173, A-174, A-175, A-176, A-177, A-178, A-179, A-180, A-181, A-182, A-183, A-184, A-185, A-186, A-187, A-188, A-189, A-190, A-191, A-192, A-193, A-194, A-195, A-196, A-197, A-198, A-199, A-200, A-201, A-202, A-203, A-204, A-205, A-206, A-207, A-208, A-209, A-210, A-211, A-212, A-213, A-214, A-215, A-216, A-217, A-218, A-219, A-220, A-221, A-222, A-223, A-224, A-225, A-226, A-227, A-228, A-229, A-230, A-231, A-232, A-233, A-234, A-235, A-236, A-237, A-238, A-239, A-240, A-241, A-242, A-243, A-244, A-245, A-246, A-247, A-248, A-249, A-250, A-251, A-252, A-253, A-254, A-255, A-256, A-257, A-258, A-259, A-260, A-261, A-262, A-263, A-264, A-265, A-266, A-267, A-268, A-269, A-270, A-271, A-272, A-273, A-274, A-275, A-276, A-277, A-278, A-279, A-280, A-281, A-282, A-283, A-284, A-285, A-286, A-287, A-288, A-289, A-290, A-291, A-292, A-293, A-294, A-295, A-296, A-297, A-298, A-299, A-300, A-301, A-302, A-303, A-304, A-305, A-306, A-307, A-308, A-309, A-310, A-311, A-312, A-313, A-314, A-315, A-316, A-317, A-318, A-319, A-320, A-321, A-322, A-323, A-324, A-325, A-326, A-327, A-328, A-329, A-330, A-331, A-332, A-333, A-334, A-335, A-336, A-337, A-338, A-339, A-340, A-341, A-342, A-343, A-344, A-345, A-346, A-347, A-348, A-349, A-350, A-351, A-352, A-353, A-354, A-355, A-356, A-357, A-358, A-359, A-360, A-361, A-362, A-363, A-364, A-365, A-366, A-367, A-368, A-369, A-370, A-371, A-372, A-373, A-374, A-375, A-376, A-377, A-378, A-379, A-380, A-381, A-382, A-383, A-384, A-385, A-386, A-387, A-388, A-389, A-390, A-391, A-392, A-393, A-394, A-395, A-396, A-397, A-398, A-399, A-400, A-401, A-402, A-403, A-404, A-405, A-406, A-407, A-408, A-409, A-410, A-411, A-412, A-413, A-414, A-415, A-416, A-417, A-418, A-419, A-420, A-421, A-422, A-423, A-424, A-425, A-426, A-427, A-428, A-429, A-430, A-431, A-432, A-433, A-434, A-435, A-436, A-437, A-438, A-439, A-440, A-441, A-442, A-443, A-444, A-445, A-446, A-447, A-448, A-449, A-450, A-451, A-452, A-453, A-454, A-455, A-456, A-457, A-458, A-459, A-460, A-461, A-462, A-463, A-464, A-465, A-466, A-467, A-468, A-469, A-470, A-471, A-472, A-473, A-474, A-475, A-476, A-477, A-478, A-479, A-480, A-481, A-482, A-483, A-484, A-485, A-486, A-487, A-488, A-489, A-490, A-491, A-492, A-493, A-494, A-495, A-496, A-497, A-498, A-499, A-500, A-501, A-502, A-503, A-504, A-505, A-506, A-507, A-508, A-509, A-510, A-511, A-512, A-513, A-514, A-515, A-516, A-517, A-518, A-519, A-520, A-521, A-522, A-523, A-524, A-525, A-526, A-527, A-528, A-529, A-530, A-531, A-532, A-533, A-534, A-535, A-536, A-537, A-538, A-539, A-540, A-541, A-542, A-543, A-544, A-545, A-546, A-547, A-548, A-549, A-550, A-551, A-552, A-553, A-554, A-555, A-556, A-557, A-558, A-559, A-560, A-561, A-562, A-563, A-564, A-565, A-566, A-567, A-568, A-569, A-570, A-571, A-572, A-573, A-574, A-575, A-576, A-577, A-578, A-579, A-580, A-581, A-582, A-583, A-584, A-585, A-586, A-587, A-588, A-589, A-590, A-591, A-592, A-593, A-594, A-595, A-596, A-597, A-598, A-599, A-600, A-601, A-602, A-603, A-604, A-605, A-606, A-607, A-608, A-609, A-610, A-611, A-612, A-613, A-614, A-615, A-616, A-617, A-618, A-619, A-620, A-621, A-622, A-623, A-624, A-625, A-626, A-627, A-628, A-629, A-630, A-631, A-632, A-633, A-634, A-635, A-636, A-637, A-638, A-639, A-640, A-641, A-642, A-643, A-644, A-645, A-646, A-647, A-648, A-649, A-650, A-651, A-652, A-653, A-654, A-655, A-656, A-657, A-658, A-659, A-660, A-661, A-662, A-663, A-664, A-665, A-666, A-667, A-668, A-669, A-670, A-671, A-672, A-673, A-674, A-675, A-676, A-677, A-678, A-679, A-680, A-681, A-682, A-683, A-684, A-685, A-686, A-687, A-688, A-689, A-690, A-691, A-692, A-693, A-694, A-695, A-696, A-697, A-698, A-699, A-700, A-701, A-702, A-703, A-704, A-	do.		
E	520	Waldorf Paper Products Co.	do.	Easement	Oct. 17, 1906	Superceded & cancelled by Deed 512 below Feb. 23, 1907 Vol. 293 Deeds P. 336	City cons'l. etc. of spur track The same as described in Deed 497 & 498	11075	197/97
F	520A	do.	do.	Ind. Tel. Right	June 13, 1906		City cons'l. etc. of spur track	do.	
G	592	Harmer-Waldorf Co. et al.	do.	Easement	Oct. 4, 1907	Superceded & Cancelled by Deed 520 above	City cons'l. etc. of spur track	do.	
H									
I									
J									
K									
L									
M									



Date. Agreement made the Ninth day of November A.D. 1956  
between the NORTHERN PACIFIC RAILWAY COMPANY hereinafter called the  
"Company" and

Parties.

M & S Construction Company  
1601 South Avenue  
Missoula, Montana

hereinafter called the "Contractor."

HBK

The Contractor agrees to furnish all labor, services, appliances and material for, except as may be hereinafter otherwise provided and to construct, install, complete and finish in the most thorough workmanlike and substantial manner in every respect, within the time hereinafter specified, and according to the specifications hereto annexed and made part of this contract.

Grading for sidings and spur track near Mile Post 132, between  
DeSmet and Frenchtown, Montana.

Work.

Date of  
completion.

The work is to be commenced immediately and completed on or before

December 10, 1956.

**Definition  
of terms  
Engineer  
Chief  
Engineer.**

Where the word "Engineer" occurs in this contract or specifications attached hereto it refers to the Engineer of the Company representing the Company in connection with this contract; and "Chief Engineer" means the Chief Engineer of the Company from time to time.

**Protection  
of Operated  
Property.**

In the prosecution of work under this contract on or near operated trackage of the Company, or of any other Railway Company, the safe and uninterrupted operation of said trackage shall take precedence over all contract work, and nothing shall be done or suffered to be done by the Contractor, his agents or employees, which will endanger or delay the trains on the said operated tracks.

**Keep  
Crossings  
Open and  
Safe.**

The Contractor shall keep open and in safe condition all public or private highways, highway crossings and highway approaches that may be affected by his operations hereunder, unless permission to the contrary is given by the Engineer.

Whenever, on the authority of the Engineer highways or road crossings are temporarily closed, disturbed or detoured, the Contractor, at his own expense, shall erect and maintain suitable barriers, warning signs and lights.

**Local  
Regulations.**

The Contractor, at his own expense, shall obtain all necessary permits and shall comply in all respects with any ordinances, laws or regulations of the general or local government properly applicable to the work.

**Sub-contracts.**

The work shall be performed under the personal supervision of the Contractor and neither this contract or any interest therein shall be assigned, nor said work or any part thereof sub-contracted without the written consent of the Chief Engineer to every such assignment or sub-contract.

**Lines, Levels  
and Marks.**

For the guidance of the Contractor in prosecuting the work, lines, levels and marks which the Company decides necessary will be furnished by the Engineer.

The Contractor shall be solely responsible for the construction of the work in accordance with said lines, levels and marks, and for any disturbance or displacements of marks from their position as finally located by the Engineer.

**Work when  
and where  
directed.**

The Contractor shall prosecute and complete the work according to the Contractor's own manner and methods and with and by the Contractor's own means and employees, free from any supervision, inspection or control whatever by the Company, except only such inspection as may be necessary to enable the Company to determine whether the work performed complies with the requirements of this contract and conforms to the plans and specifications, it being the intention of the parties hereto that the Contractor shall be and remain an independent contractor and that nothing herein contained shall be construed as inconsistent with that status.

**Remedy  
faulty  
work.**

All imperfect or insufficient construction or material shall be remedied immediately whenever pointed out and shall be made good and sufficient to comply with contract and specifications. Omission by the Engineer to disapprove of or reject insufficient or imperfect construction or material at the time of any monthly or other estimate shall not be deemed an acceptance of such construction or material. The Engineer shall have the power at all times to have defective construction or material taken out and rebuilt or replaced at the expense of the Contractor.

**Patents.**

The Contractor shall protect and indemnify the Company against claims, demands, judgments and costs, on account of patented devices or parts used by him on the work.

**Extra work  
and bills  
therefor.**

The term extra work as used in this contract shall be considered as meaning work which is not properly a part of or incidental to the creation of a completed unit of the work for which a unit price has been specified in the contract.

Payment will be made for extra work to cover direct cost for such work and ten percent additional. Direct cost of extra work upon which said additional ten percent shall be computed shall consist of labor, material, field supervision, payroll and sales taxes, and insurance, but shall not include rental of equipment or general office expense. Said additional ten percent covers the Contractor's profit, general office expense and the use of small tools. Extra work performed by a Subcontractor shall be paid for on same basis as heretofore stated for the Contractor, and in addition thereto, the Company will pay the Contractor for extra work performed by the Subcontractor five percent of the Subcontractor's direct cost as herein defined.

If equipment is required in connection with extra work it shall be paid for in accordance with rental rates to be agreed upon by the parties prior to its use.

No extra work or material will be allowed or paid for, excepting that done or furnished in performance of a previous order in writing of the Engineer, and all claims for extra work or material must be presented to the Engineer for allowance at the close of the month in which the work shall have been done or material furnished, otherwise all claim therefor shall be deemed waived.

**Arbitration.**

Should the parties disagree upon any question touching the construction of this agreement or concerning the business or manner of transacting the business to be carried on under its provisions or concerning the observance or performance of any of its covenants, including, among other things, extra work, the amount and quantity, character and kind of work done and materials furnished by the Contractor, such questions shall be submitted to the Chief Engineer of the Company, who is hereby made the arbitrator to decide all such questions, and his decision shall be final and conclusive on the parties.

Prices for  
work.

The prices to be paid by the Company for the work are as follows:

1. Clearing and grubbing for channel change of O'Keefe Creek.  
Lump Sum - - - - \$ 1,500.00
2. Excavation, including all haul and placing in embankment,  
unclassified.  
Price per Cubic Yard - - \$ 0.59
3. Embankment:  
Furnish borrow pit site, load, haul, spread and  
compact material. Pay quantities measured in exca-  
vation at borrow pit.  
Price per Cubic Yard - - \$ 0.95
4. Haul and place 15 inch corrugated metal culvert pipe.  
Price per Lin. Foot - - \$ 1.50
5. Haul and place 30 inch corrugated metal culvert pipe.  
Price per Lin. Foot - - \$ 3.00
6. Haul and place 36 inch corrugated metal culvert pipe.  
Price per Lin. Foot - - \$ 3.60
7. Furnish in place ballast as specified.  
Price per Cubic Yard - - \$ 0.95

**Transportation  
General**

The Company will furnish such free transportation over its lines for use in connection with the work covered by this contract as is provided for hereinafter. Such free transportation will be subject to the review and instructions of the Chief Engineer as to the necessity for and proper use of same, and the Chief Engineer may make exceptions to such provisions and grant additional free transportation if in his judgment it may be found necessary for the proper handling of the work.

**Passenger  
Transportation**

**Passenger Transportation:**  
(To be used only when traveling on business in connection with this contract).

1. For one member and one superintendent of the Contractor's firm or corporation, time passes good Stations between Livingston and Seattle.

2. For Sub-contractors trip passes from

None

and intermediate points to the station of the Company nearest the site of the work and return.

3. For foremen and skilled and common laborers from Stations between Livingston and Seattle and to points of work.

4. In addition to the foregoing transportation and subject to such exceptions as the Chief Engineer may make with respect thereto, return transportation will be furnished to such foremen and skilled labor as may remain until completion of the class of work on which employed, but no return transportation will be granted for common laborers.

**Freight  
Transportation**

**Freight Transportation:**

1. For all material to be used in the work, except coal, fuel oil, gasoline, oil fuels for internal combustion engines, boarding and commissary supplies, hay and grain, lumber for camps, powder and explosives, from

Stations between Livingston and Seattle. - None.

and intermediate points to the station of the Company or spur track nearest the site of the work.

2. For tools, outfit, and equipment used in the work from

Stations between Livingston and Seattle. - None.

to the station of the Company or spur track nearest the site of the work and return to the point from which same were originally shipped to the work, or to any intermediate point on the line of the Company. The right to such free return transportation must be exercised within ninety (90) days after the date of completion of the work, after which time no free transportation will be furnished.

**Express  
Transportation**

**Express Transportation:**

The Contractor shall pay full tariff rates on all materials, supplies and equipment which he elects to ship by express over Company and Foreign lines.



**Demurrage charges.**

Nothing herein contained shall be construed to relieve the Contractor of payment of demurrage charges under applicable tariffs. Claims for cancellation or refund of demurrage on account of inclement weather, or for other reasons, shall be presented to the Engineer in charge of the work within fifteen (15) days after presentation of demurrage bills by the Company, and it is hereby agreed that no claim shall be presented after the expiration of the above time limit.

**Routing**

For all materials for which free transportation is not granted the Contractor shall buy said materials, if possible, at points which will permit the Company to receive the haul on same, routing same via the lines of the Company and its connecting lines designated by the Chief Engineer.

**Estimates.**

**Payments.**

**Retained percentage.**

Approximate estimates of the work done are to be made by the Engineer or his assistants at or about the end of each calendar month; and payment of the amount of each monthly estimate will be made by the Company on or about the twentieth day of the following month, less however all previous payments and less ten per cent of such estimates. Ten per cent upon all monthly estimates shall be retained until, and as security for, complete performance of this contract.

**Stopping work.**

The Company reserves the right at any time before completion to stop the work or any part thereof, or retard the work in whole or in part and upon receipt of notice to such effect, the Contractor shall promptly comply therewith. The Contractor shall have no claim whatsoever for damages by reason of stopping or retarding the work but shall receive payment for the work done in full discharge and satisfaction of all demands against the Company, provided, however, if the Chief Engineer shall deem the stopping or retarding of work pursuant to said notices to have materially affected the cost of doing the work, he shall determine the prices to be paid so as to do substantial justice between the parties. Any notice given by the Company under this paragraph shall be in writing signed by the Engineer, and shall be delivered to the Contractor or to an employee of the Contractor on the work.

**Power to cancel contract.**

If the Contractor at any time shall fail to perform any agreement herein contained the Company may cancel this contract; in which event the Contractor shall have no claim for damages, or for compensation for work done or material furnished, or for any portion of the percentage retained on monthly estimates. In the event of cancellation hereunder the Company shall have the right to take possession of and hold the work done and material furnished and to retain all moneys which may be then unpaid.

**Contractor to pay all laborers.**

Before final settlement is made the Contractor shall furnish to the Company satisfactory evidence that the work is free and clear from all liens for labor or materials, and that all payroll taxes have been paid, and that no claim exists out of which a lien may grow.

**Indemnity.**

The Contractor shall indemnify and save harmless the Company from any and all claims, suits, losses, damages or expenses on account of injuries to or death of any and all persons whomsoever, including the Contractor, subcontractors, employees of the Contractor, subcontractors and of the Company, and any and all property damage, arising or growing out of, or in any manner connected with the work performed under this contract, or caused or occasioned in whole or in part by reason of the presence of the person or of the property of the Contractor, subcontractors, their employees or agents, upon or in proximity to the property of the Company.

The Contractor further agrees that it will defend, at its own expense, in the name and on behalf of the Company, all claims or suits for injuries to persons or damage to property arising or growing out of the work carried on under this contract, for which the Company is liable, or is alleged to be liable.

The Contractor will procure and furnish to the Company an insurance policy or endorsement to the Contractor's public liability insurance policy herein provided for, under the terms of which the Insurance Company assumes the liability of the Contractor hereunder.

**Workmen's Compensation.**

The Contractor, at his sole cost and expense, shall comply with all laws of the State where this contract is to be performed, relating to Workmen's Compensation covering all employees of said Contractor or of any sub-contractor employed to perform work under this contract.

**Public Liability and Property Damage Insurance.**

The Contractor shall carry regular Contractor's Public Liability Insurance providing for a limit of not less than One Hundred Thousand (\$100,000) Dollars for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of Three Hundred Thousand (\$300,000) Dollars for all damages arising out of bodily injuries to or death of two or more persons, in any one accident, and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than Fifty Thousand (\$50,000) Dollars for all damages to or destruction of property in any one accident, and subject to that limit, a total (or aggregate) limit of One Hundred Thousand (\$100,000) Dollars for all damages to or destruction of property during the policy period.

**Approval of Policies by Company.**

All such policies shall be approved by the Company as to the insurance company writing same, the amount and the form.

The Contractor shall deposit with the Company the Public Liability and Property Damage Insurance policy required hereunder, or in lieu thereof shall furnish the Company a certified copy of said policy.

**Fire Insurance.**

~~Damage by fire to the work under construction during the construction period shall be made good by the Contractor, who shall keep all structures fully insured until completion and acceptance by the Company. The cost of such insurance will be divided equally between the parties, the policies written in the name of both, loss payable as their interest may appear. The policies shall be deposited with the Chief Engineer.~~

**Sales and  
other taxes.**

The Contractor, at his sole expense, shall pay all sales taxes and other taxes of every kind, nature and description, which may accrue on equipment, material, supplies or fixtures furnished or owned by him or his sub-contractors in connection with the work contemplated by this contract, and the Contractor shall furnish to the Company satisfactory evidence that all such taxes have been paid.

**Bond.**

If required by the Company, the Contractor shall furnish to the Company a bond in amount, form and substance satisfactory and acceptable to the Company, which shall provide that the Contractor shall well and faithfully keep, perform and carry out each and all of the terms, conditions and provisions of this contract. If a bond is required, the Company will reimburse the Contractor for the cost thereof.

**Contractor's  
base of  
information.**

It is understood and agreed that the Contractor has by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the Company, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

Where borings or soundings for foundation of structures are indicated on the plans, it shall be understood that this data has been obtained for guidance in the design of the structure, and the Company will assume no responsibility contingent upon the accuracy of the borings or soundings.

**Right reserved  
to modify  
and change  
the amount  
of work.**

The Company reserves the right at any time to modify or change the plans and specifications covering the details of the work embraced in the contract, including, in cases where the contract covers the construction of new lines of railway, modifications and revisions of the located line. Such modifications or changes shall not affect the prices herein stated, nor shall any bill for extra or other charges or claims be made by reason thereof, but if the Chief Engineer shall deem the change or modification to have materially affected the cost of doing the work, he shall determine the price to be paid, either above or below, as the case may be, the prices herein provided, so as to do substantial justice between the parties. Orders for changes or modifications that may be required under this paragraph shall be given in writing by the Engineer.

**Use of Com-  
pleted or  
Partially  
Completed  
Portions.**

The Company shall have the right to take possession of and to use any completed or partially completed portions of the work notwithstanding that the time of completing the entire work, or such portions, may not have expired.

The use of such partially completed portions does not constitute acceptance, nor does it relieve the Contractor of his obligation to complete in accordance with the terms of this contract.

If such prior use of completed or partially completed portions of the work increases the cost of or delays the work, the Contractor shall be entitled to extra compensation, or extension of time, or both. The Engineer shall fix the extension of time and shall determine such extra compensation as will reimburse the Contractor for his increased cost.

Final  
Estimate.

Time of  
payment  
of final  
estimate.

Release.

When in the opinion of the Chief Engineer this contract shall have been completed, he shall so certify in writing and give a final estimate and statement of the balance unpaid; and the Company within thirty days thereafter shall pay the full balance. The Contractor at final payment will execute, acknowledge and deliver to the Company under his hand and seal a valid discharge from all claims and demands growing out of or connected with this contract.

Execution.

IN WITNESS WHEREOF, the Company has caused these presents to be signed by its duly authorized officer and the Contractor has hereunto set his hand and seal.

Witness as to the Company

Northern Pacific Railway Company.

E. R. Smith

By H. R. Peterson  
Chief Engineer

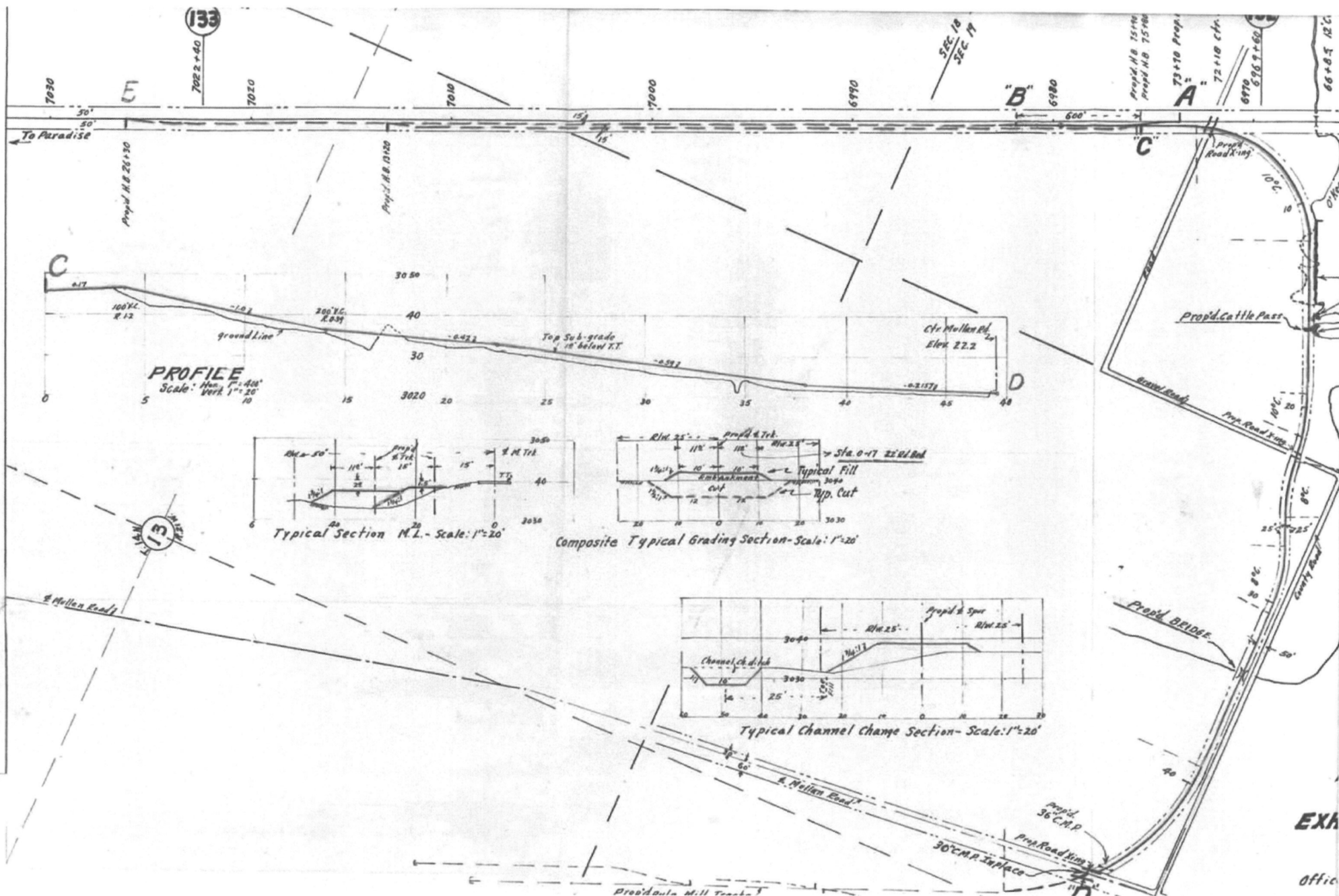
Witness as to the Contractor

Donald P. Wold

M. & S. Construction (SEAL)

By: H.S. Morgenstern (SEAL)

(SEAL)

**EXA**

Office





# NORTHERN PACIFIC RAILWAY COMPANY

## INDUSTRIAL TRACK AGREEMENT

AGREEMENT between the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the "Railroad," and WALDORF PAPER PRODUCTS COMPANY of Montana,

Parties.

a Delaware corporation,  
hereinafter called the "Industry."

This agreement supersedes and cancels, as of the date hereof, that certain other industrial track agreement dated July 15, 1957, between the Railroad and Waldorf Paper Products Company, a Minnesota corporation.

Joint Use by  
Other  
Railroads

HBK

The Industry desires the construction, maintenance, and operation of a track to be located at Schilling, Montana

Location.

shown colored red between the letter  
on the map marked "Exhibit A", attached hereto and made a part hereof; and the Railroad agrees to construct, maintain, and operate said track on the following terms and conditions:

Right of Way.

Section 1. The Industry shall first procure and furnish without expense to the Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance and operation of the track.

The Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that the same may be granted to the Railroad rather than to the Industry, to assume any, and all liability for and to indemnify, defend and save harmless the Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

Construction,  
Ownership, and  
Maintenance.

Section 2. The Railroad shall construct, own, and maintain that portion of the trackage shown colored red between the letters "A" and "B" on said Exhibit "A".

The Railroad shall also construct, at the expense of the Industry, that portion of the trackage shown colored red within the boundaries marked by green lines on said Exhibit "A", except that the Industry shall, at its own expense, do the grading and furnish and place all necessary culverts and road crossings. The Industry shall own and maintain, at its own expense, said trackage within the boundaries marked by green lines and shall pay to the Railroad Fifty-five Thousand Two Hundred Sixty and Eighty-nine One Hundredths Dollars (\$55,260.89), the agreed expense to the Railroad of constructing said trackage for the Industry.

The Industry shall pay for all present and future changes in or additions to the railroad's line made necessary by the construction and continued existence and operation of the track.

Should the Industry do any work of construction, maintenance, or of additions and betterments, it shall do such work in substantial and workmanlike manner, and in accordance with the Railroad's standards.

The Industry shall pay to the Railroad from time to time the cost of the maintenance, additions and betterments done by the Railroad, herein agreed to be borne by the Industry, within twenty (20) days after bills are rendered therefor.

Definition  
of Cost.

Section 3. For the purpose of this agreement, "cost" shall be all assignable costs, plus ten percent to cover elements of expense not capable of exact ascertainment, plus three percent of the salaries and wages paid employees of the Railroad engaged in the performance of maintenance or addition and betterment work performed by the Railroad upon the request of the Industry for insurance coverage. Material shall be charged at its current value where used.

Right of  
Railroad  
to use.

Section 4. The Railroad shall have the right to use or to extend the track for the accommodation of the business of the Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by the Industry. In case the track is regularly used by or is extended for the accommodation of another industry, it is agreed that the Railroad may fix the term upon which such new industry shall share in the cost of construction and maintenance of the track used in common.

Clearance.

Section 5. Except as herein otherwise provided, the Industry shall not place or permit to be placed, or to remain, any material, structure, pole or other obstruction within eight and one-half (8  $\frac{1}{2}$ ) feet laterally of the center, or within twenty-three (23) feet vertically from the top of the rail, of said track.

The Industry agrees that no building erected on the premises adjacent to said track shall have a swinging door or window opening toward said track which, when open, will restrict the clearance to less than eight and one-half (8  $\frac{1}{2}$ ) feet from the center line of said track.

The Industry agrees that all wires of whatsoever kind or nature adjacent to or crossing over or under the track shall be constructed and maintained in accordance with the National Electric Safety Code and laws of the State of Montana and in accordance with plans submitted by the Industry and approved by the Railroad.

The industry agrees to indemnify and save harmless the Railroad from all loss, damages, penalties, costs or judgments that may be assessed against or recovered from it on account of or in any manner growing out of a violation of this Section 5.

Public Assessments.

Section 6. The Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Transportation of Freight.

~~Section 7. All freight to or from the Industry located upon or reached by said track, shall be delivered to and transported by the Railroad over its line or lines of railway if its rate of transportation is as low as the rate over competing railway lines.~~

Liability.

Section 8. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment.

Section 9. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad.

Right to Disconnect Track.

Section 10. The Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) The Industry ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served

~~(b) The Railroad determines that the amount of business done upon such tracks be insufficient to justify the continued operation of the same by the Railroad~~

(c) The Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.

(d) The Railroad shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or otherwise alter its tracks at or near the point of connection with said Industry track so as to make it impracticable in the judgment of the management of said Railroad to continue said operation; provided, however, that if such change or changes do not render it impracticable in the judgment of said management of said Railroad, for the convenient operation of its railroad, the Industry shall continue to have similar track connection consistent with the change or changes made by the Railroad.

~~(e) Whenever any other carrier shall be permitted, without the consent of the Railroad, to operate on said track.~~

(f) If the Industry fails to maintain said spur track in reasonably safe condition.

~~No recourse or claim will exist in favor of or be asserted by the Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this section of this agreement.~~

Section 11. The Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track originally paid for by the Industry and to pay to the Industry the salvage value of the usable material so removed, less cost of recovering it.

Dated July 15, 1957

NORTHERN PACIFIC RAILWAY COMPANY

By E. B. Stanton  
Vice President

WALDORE PAPER PRODUCTS COMPANY OF MONTANA

By W. H. Sandberg  
President

10-8-50 241 MP

Form 35

# NORTHERN PACIFIC RAILWAY COMPANY

## INDUSTRIAL TRACK AGREEMENT

AGREEMENT between the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the "Railroad," and WALDOFF-HOERNER PAPER PRODUCTS COMPANY, INC., a Delaware corporation hereinafter called the "Industry."

Joint Use by  
Other  
Railroads

The Industry desires the construction, maintenance, and operation of a track to be located at Schilling, Montana.

Location.

shown colored RED and GREEN between the letters "A" & "B" and "B" & "C" respectively on the map marked "Exhibit A", attached hereto and made a part hereof; and the Railroad agrees to construct, maintain, and operate said track, on the following terms and conditions:

Right of Way.

Section 1. The Industry shall first procure and furnish without expense to the Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance, and operation of the track.

The Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that the same may be granted to the Railroad rather than to the Industry, to assume any, and all liability for and to indemnify, defend and save harmless the Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

Construction,  
Ownership, and  
Maintenance.

Section 2. The Railroad, at its expense, shall construct, except as hereinafter provided, that portion of said track shown colored RED between the letters "A" and "B" and shall construct, at the expense of the Industry, that portion of said track shown colored GREEN between the letters "B" and "C" on said Exhibit "A".

The Industry shall, at its own expense, furnish all ballast and do all necessary grading for the construction of said track shown colored RED and GREEN between the letters "A" and "B", and "B" and "C" respectively on said Exhibit "A".

The Industry, before any construction is begun, shall pay to the Railroad the sum of \$4,068.32, the agreed expense of the work to be performed by the Railroad at the Industry's expense.

Upon completion of construction, the Railroad shall own and maintain at its expense that portion of said track shown colored RED between the letters "D" and "A" and between the letters "A" and "B" on said Exhibit "A", it being understood that this portion of said track shall be used solely for the storage of the Railroad's cars. The Industry shall own and maintain, at its own expense, that portion of said track shown colored GREEN between the letters "B" and "C" on said Exhibit "A".

Definition  
of Cars.

The Railroad hereby grants to the Industry the right to operate, with its equipment, upon that portion of said track shown colored RED between the letters "D" and "B" and the Industry hereby grants to the Railroad the right to operate, with its equipment, upon and over that portion of said track shown colored GREEN between the letters "B" and "C" on said Exhibit "A".

Right of  
Railroad  
to Use.

~~Where the use of the track is regularly used by or is extended for the accommodation of another industry, it is agreed that the Railroad may, in the terms upon which such other industry shall share in the cost of construction and maintenance of the track used in common.~~

Clearance.

Section 5. Except as herein otherwise provided, the Industry shall not place or permit to be placed, or to remain, any material, structure, pole or other obstruction within eight and one-half (8 1/2) feet laterally of the center, or within twenty-three (23) feet vertically from the top of the rail, of said track.

The Industry agrees that no building erected on the premises adjacent to said track shall have a swinging door or window opening toward said track which, when open, will restrict the clearance to less than eight and one-half (8 1/2) feet from the center line of said track.

The Industry agrees that all wires of whatever kind or nature adjacent to or crossing over or under the track shall be constructed and maintained in accordance with the National Electric Safety Code and laws of the State of Louisiana and in accordance with plans submitted by the Industry and approved by the Railroad.

The industry agrees to indemnify and save harmless the Railroad from all loss, damages, penalties, costs or judgments that may be assessed against or recovered from it on account of or in any manner growing out of a violation of this Section 5.

Public Assessments.

Section 6. The Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Transportation of Freight.

Section 7. All freight to or from the Industry located upon or reached by said track, shall be delivered to and transported by the Railroad over its line or lines of railway if its rate of transportation is as low as the rate over competing railway lines.

Liability.

Section 8. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment.

Section 9. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad.

Right to Discontinue Track.

Section 10. The Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) The Industry ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served.

(b) The Railroad determines that the amount of business done upon such tracks be insufficient to justify the continued operation of the same by the Railroad.

(c) The Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.

(d) The Railroad shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or otherwise alter its tracks at or near the point of connection with said Industry track so as to make it impracticable in the judgment of the management of said Railroad to continue said operation; provided, however, that if such change or changes do not render it impracticable in the judgment of said management of said Railroad, for the convenient operation of its railroad, the Industry shall continue to have similar track connection consistent with the change or changes made by the Railroad.

(e) Whenever any other carrier shall be permitted, without the consent of the Railroad, to operate on said track.

(f) If the Industry fails to maintain said spur track in reasonably safe condition.

No recourse or claim will exist in favor of or be asserted by the Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this section of this agreement.

Section 11. The Railroad agrees, upon discontinuance of the use of the track, to remove from its right-of-way that part of the track originally paid for by the Industry and to pay to the Industry the salvage value of the usable material so removed, less cost of recovering it.

Dated June 13, 1961

NORTHERN PACIFIC RAILWAY COMPANY

By E. J. Van Vorst  
Vice President

WAIDROP-HORNBER PAPER PRODUCTS COMPANY,  
INC.

By W. M. Duvall  
Title: Pres.

# NORTHERN PACIFIC RAILWAY COMPANY

## INDUSTRIAL TRACK AGREEMENT

AGREEMENT between the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the "Railroad," and HOERNER WALDORF CORPORATION OF MONTANA, a Montana corporation hereinafter called the "Industry."

Parties.

Joint Use by  
Other  
Railroads

Location.

The Industry desires the construction, maintenance and operation of two spur tracks to be located at Schilling, Montana, shown colored RED between the letters A and B, designated Spur No. 1, and between the letters C and D, designated Spur No. 2, on the map marked Exhibit "A" attached hereto and made a part hereof; and the Railroad agrees to construct, maintain and operate said Spur No. 1 and said Spur No. 2, hereinafter referred to collectively as "track" on the following terms and conditions:

Right of Way.

Section 1. The Industry shall first procure and furnish without expense to the Railroad all necessary right of way, including all necessary public authority and permission for the construction, maintenance, and operation of the track.

The Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions of any such public authority or permission and, regardless of the fact that the same may be granted to the Railroad rather than to the Industry, to assume any, and all liability for and to indemnify, defend and save harmless the Railroad from and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance with or violation of the provisions of such public authority or permission.

Construction,  
Ownership, and  
Maintenance.

### Section 2.

Section 2. The Railroad, for the agreed sum of \$19,330.00, payable by the Industry on or before the execution of this agreement, shall construct said track, and shall furnish crushed rock ballast for the area shown outlined by GREEN line on said Exhibit "A".

The Industry shall own and shall bear and pay the entire cost and expense of maintenance of said track and at its expense shall pave the area outlined by GREEN line on said Exhibit "A".

Should the Industry do any work of construction, maintenance, or of additions and betterments, it shall do such work in substantial and workmanlike manner, and in accordance with the Railroad's standards.

The Industry shall pay to the Railroad from time to time the cost of the maintenance, additions and betterments done by the Railroad, herein agreed to be borne by the Industry, within twenty (20) days after bills are rendered therefor.

Definition  
of Cost.

Section 3. For the purpose of this agreement, "cost," shall be all assignable costs, plus ten percent to cover elements of expense not capable of exact ascertainment, plus three percent of the salaries and wages paid employees of the Railroad engaged in the performance of maintenance or addition and betterment work performed by the Railroad upon the request of the Industry for insurance coverage. Material shall be charged at its current value where used.

Right of  
Railroad  
to use.

Section 4. The Railroad shall have the right to use or to extend the track for the accommodation of the business of the Railroad or the business of other parties, provided such use or extension does not unduly interfere with the use of said track by the Industry. If the track is regularly used by or is extended for the accommodation of another industry, it is agreed that the Railroad may fix the terms upon which such other industry shall share in the cost of construction and maintenance of the track used in common.

Clearances.

Section 5. Except as herein otherwise provided, the Industry shall not place or permit to be placed, or to remain, any material, structure, pole or other obstruction within eight and one-half (8 1/2) feet laterally of the center, or within twenty-three (23) feet vertically from the top of the rail, of said track.

The Industry agrees that no building erected on the premises adjacent to said track shall have a swinging door or window opening toward said track which, when open, will restrict the clearance to less than eight and one-half (8 1/2) feet from the center line of said track.

The Industry agrees that all wires of whatsoever kind or nature adjacent to or crossing over or under the track shall be constructed and maintained in accordance with the National Electric Safety Code and laws of the State of Montana and in accordance with plans submitted by the Industry and approved by the Railroad.

The Industry agrees to indemnify and save harmless the Railroad from all loss, damages, penalties, costs or judgments that may be assessed against or recovered from it on account of or in any manner growing out of a violation of this Section 5.

Public Assessments.

Section 6. The Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Transportation of Freight.

Section 7. All freight to or from the Industry located upon or reached by said track, shall be delivered to and transported by the Railroad over its line or lines of railway if its rate of transportation is as low as the rate over competing railway lines.

Liability.

Section 8. It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, regardless of Railroad negligence, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others, and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage, or injury from any act or omission of the Industry, its employee, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment.

Section 9. The Industry shall not assign this agreement or any interest therein without the written consent of the Railroad.

Right to Disconnect Track.

Section 10. The Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection, in the event of any of the following contingencies, viz.:

(a) The Industry ceases for a continuous period of one year the doing of business in an active and substantial way at the industry or establishment served.

(b) The Railroad determines that the amount of business done upon such tracks be insufficient to justify the continued operation of the same by the Railroad.

(c) The Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this contract.

(d) The Railroad shall find it necessary or desirable, or be required by law or ordinance or police regulation, or by changed conditions, to elevate or depress or otherwise alter its tracks at or near the point of connection with said Industry track so as to make it impracticable in the judgment of the management of said Railroad to continue said operation; provided, however, that if such change or changes do not render it impracticable in the judgment of said management of said Railroad, for the convenient operation of its railroad, the Industry shall continue to have similar track connection consistent with the change or changes made by the Railroad.

(e) Whenever any other carrier shall be permitted, without the consent of the Railroad, to operate on said track

(f) If the Industry fails to maintain said spur track in reasonably safe condition.

~~No recourse or claim will exist in favor of or be asserted by the Industry because of the discontinuance of operation and removal of the metal and fastenings as provided in this section of this agreement.~~

Section 11. The Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track originally paid for by the Industry and to pay to the Industry the salvage value of the usable material so removed, less cost of recovering it.

Dated March 12 1968.

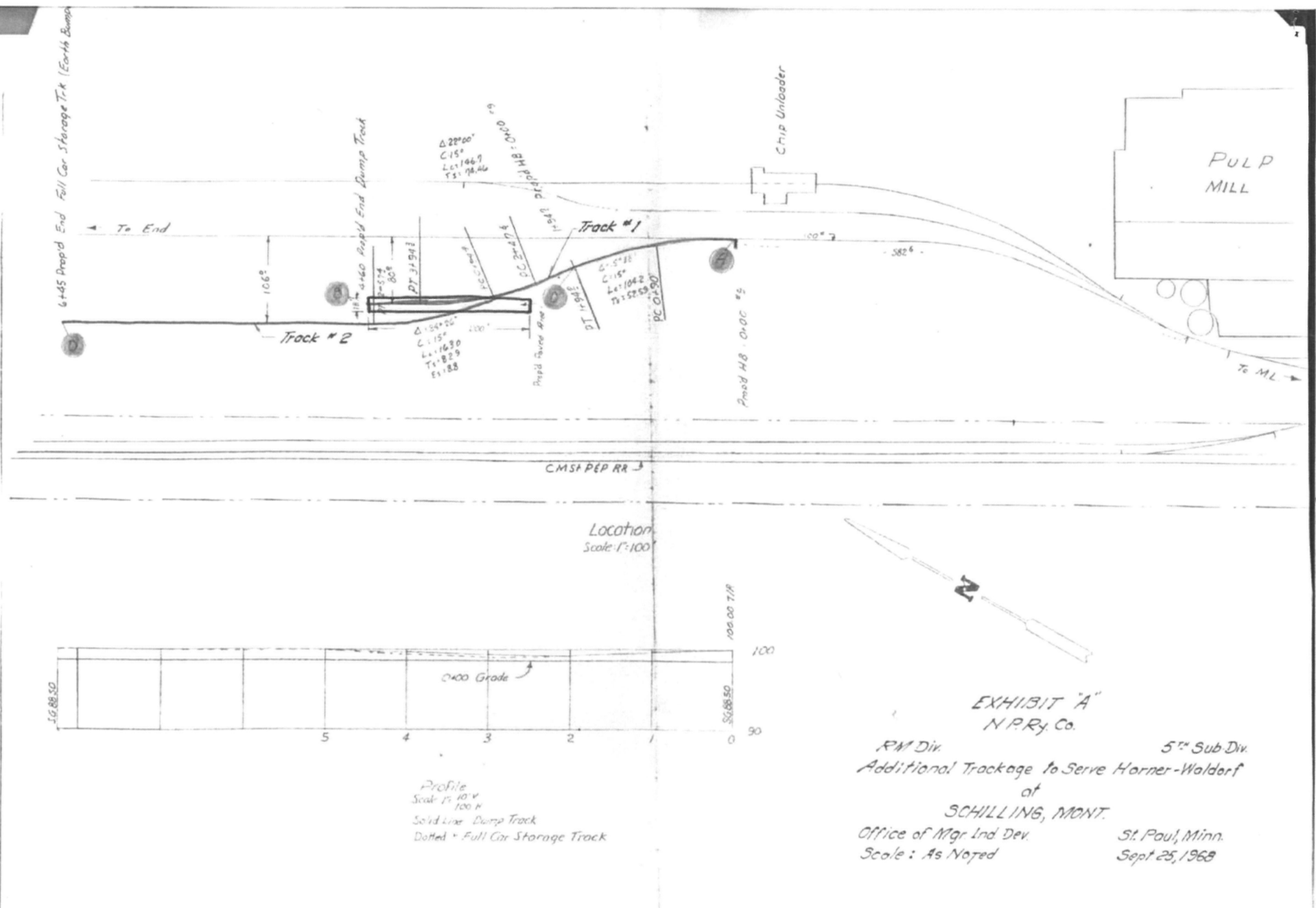
NORTHERN PACIFIC RAILWAY COMPANY

By [Signature]  
Vice President

HOERNER WALDORF CORPORATION OF MONTANA

By [Signature]  
Title: Vice President





Schilling, Mont. -  
9-1BURLINGTON NORTHERN INC.  
DOCKET NO. 15-18

OFFICE OF SECRETARY

ST. PAUL, MINNESOTA

**BURLINGTON NORTHERN INC.****INDUSTRIAL TRACK AGREEMENT**

Parties

AGREEMENT, made this 7 day of DECEMBER, 19 70,  
between BURLINGTON NORTHERN INC., a corporation hereinafter called "Railroad", and  
HOERNER-WALDORF CORPORATION, a Delaware Corporation  
hereinafter called "Industry"

Location

WHEREAS, Industry desires the construction, maintenance and operation of trackage hereinafter called  
"track" to be located at Schilling, Montana  
shown between the letters A and B on the plat hereto attached, marked  
Exhibit "A", and by this reference made a part hereof.

NOW therefore, the parties hereto agree to the construction, maintenance and operation of said track on the  
following terms and conditions:

Right of Way

Section 1. Industry shall first procure and furnish without expense to Railroad all necessary right of way,  
including all necessary public authority and permission for the construction, maintenance and operation of the  
track.

Industry further agrees that said track shall be constructed, maintained and operated subject to all provisions  
of any such public authority or permission and, regardless of the fact that same may be granted to Railroad rather  
than to Industry, to assume any and all liability for and to indemnify, defend and save harmless Railroad from  
and against any and all loss, cost, damage, suit or expense in any manner arising or growing out of compliance  
with or violation of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered by public authority, the Industry shall  
indemnify Railroad against any expense in connection therewith or consent to the removal of the track.

Construction,  
Ownership and  
Maintenance

Section 2. (a) Industry, at its own expense, will do all grading and provide necessary drainage for that  
portion of track which is located off Railroad property, unless by prior understanding Railroad does the work,  
which, in such event, will be at expense of Industry.

(b) Railroad will construct track from point of switch to point of clearance (14 feet from center  
to center of tracks) between the letters A and B on Exhibit "A" for the agreed amount  
of Nine Thousand Two Hundred Ninety-five Dollars (\$ 9,295.00) and from  
point of clearance to end between the letters \_\_\_\_\_ on Exhibit "A" for the  
agreed amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

all at expense of Industry. Industry, before any construction is begun, shall pay to Railroad such agreed amount:

(c) Cost of construction of track from point of switch to point of clearance between the letters \_\_\_\_\_

on Exhibit "A", paid for by Industry in the first instance in  
the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

is subject to refund from the general funds of Railroad to Industry at the rate of Ten and No/100 Dollars  
(\$10.00) for each car of carload freight delivered on or shipped from track on which Railroad receives road-haul  
revenue in excess of Fifty and No/100 Dollars (\$50.00) during the period of five (5) years after the date of  
completion of track, unless the total of such refund payments shall sooner equal said amount. Industry shall  
submit a list of such cars to Railroad's Director Disbursement Accounting, 176 East Fifth Street, Saint Paul,  
Minnesota, 55101, upon each six (6) month anniversary of this agreement, and a settlement shall be made  
promptly after verification of such lists by said Director. Such lists shall show car numbers, waybill numbers and  
dates, points of origin and destination.

(d) Railroad will maintain track between the letters A and B  
on Exhibit "A" at its expense and will maintain track between the letters \_\_\_\_\_  
on Exhibit "A" at expense of Industry.

(e) Railroad will own the track between the letters \_\_\_\_\_  
on Exhibit "A" and Industry will own the track between the letters A and B  
on Exhibit "A".

Industry shall pay for all present and future changes in or additions to Railroad's line made necessary by the  
construction and continued existence and operation of the track.

Industry shall pay to Railroad from time to time the cost of maintenance, additions and betterments, done  
by Railroad, herein agreed to be borne by Industry, within twenty (20) days after bills are rendered therefor.

Should Industry do any work of construction, maintenance, or of additions and betterments, it shall do such  
work in substantial and workmanlike manner, and in accordance with Railroad's standards. If Industry fails to  
properly maintain the track or to pay the bills therefor within the prescribed time, Railroad may refuse to  
operate over it.

Definition  
of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual labor and material costs including all  
assignable additives. Material and supplies shall be charged at current value when used. Rental for equipment  
shall be on a non-profit basis to Railroad.

Right of  
Railroad to  
Use

Section 4. Railroad shall have the right to use and extend said track and construct spur tracks therefrom for  
the accommodation of the business of Railroad or the business of other parties, provided such use or extension  
does not unduly interfere with the use of said track by Industry. In case the track is regularly used by or is  
extended for the accommodation of another industry, it is agreed that Railroad may fix the terms upon which  
such other industry shall share in the cost of construction and maintenance of the track used in common.

Clearances

Section 5. Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within 8-1/2 feet laterally of the center or within 23 feet vertically from the top of the rail of said track; provided that if by statute or order of competent public authority greater clearances shall be required than those provided for in this Section 5, then Industry shall strictly comply with such statute or order. Industry agrees to indemnify Railroad and save it harmless from and against any and all claims, demands, expenses, costs and judgments arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any covenant contained in this agreement.

Public Assessments

Section 6. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of constructing, maintaining, and operating said track.

Liability

Section 7. Industry agrees to indemnify and hold harmless Railroad for loss, damage or injury from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or about said track; and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

Assignment

Section 8. Industry shall not assign this agreement or any interest therein without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

Right to Disconnect Track

Section 9. Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection in the event Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

Removal of Track

Section 10. Railroad agrees, upon discontinuance of the use of the track, to remove from its right of way that part of the track originally paid for by Industry and to pay to Industry the salvage value of the usable material so removed, less cost of recovering it.

Joint Use by Other Railroads

Section 11. This agreement is also made for the benefit of such other railroads who, either by prior understandings or agreements with the Railroad have the right to use the track, or who shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

BURLINGTON NORTHERN INC.

By

*G. J. DePaul*

Vice President

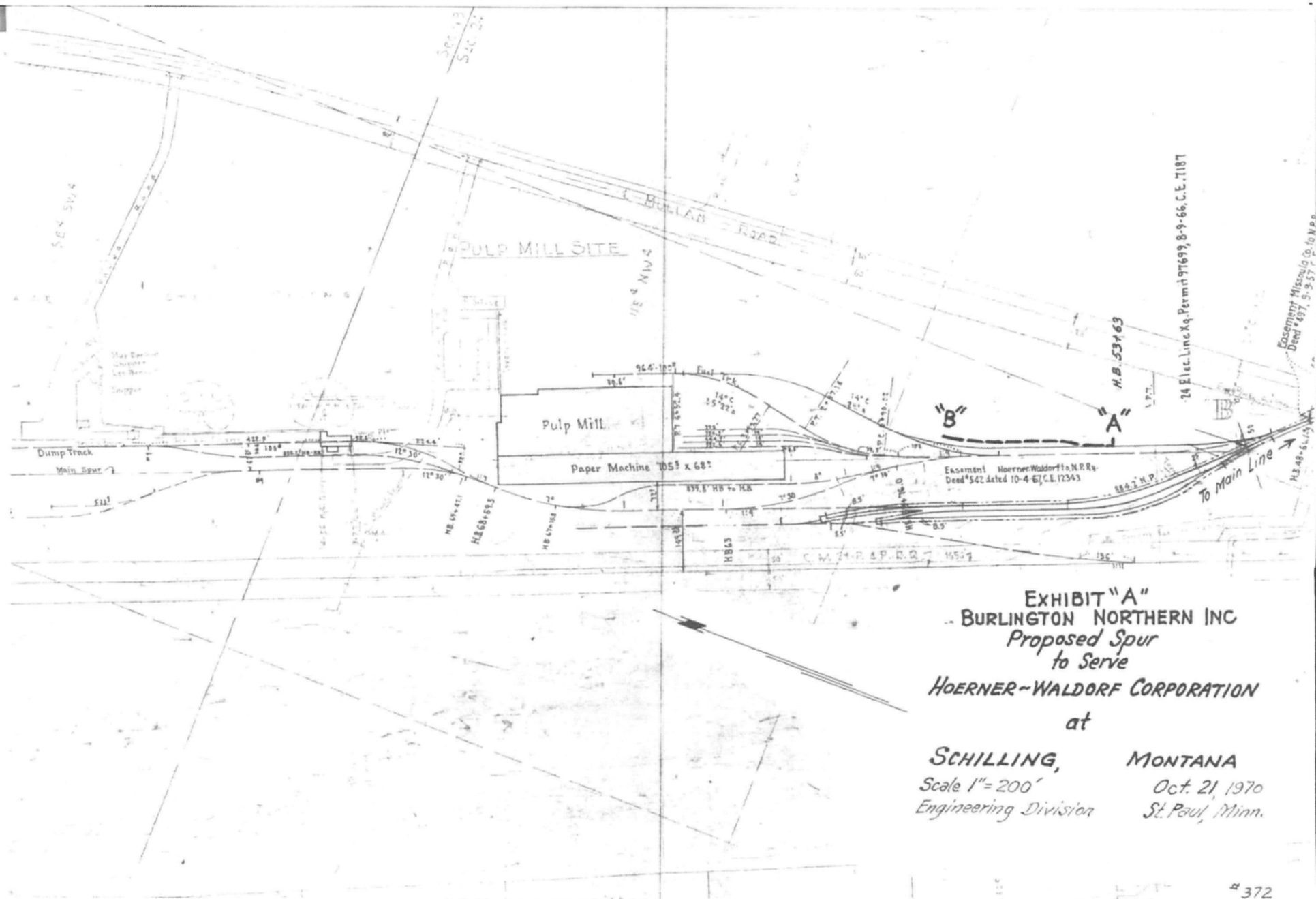
HOERNER-WALDORF CORPORATION

By

*Ray C. Cunningham*

Title

Vice Presy



**EXHIBIT "A"**  
**BURLINGTON NORTHERN INC**  
*Proposed Spur*  
*to Serve*  
**HOERNER-WALDORF CORPORATION**  
 at

**SCHILLING, MONTANA**  
 Scale 1" = 200' Oct. 21, 1970  
 Engineering Division St. Paul, Minn.

BURLINGTON NORTHERN INC.  
DOCKET NO. BN 1492

OFFICE OF SECRETARY  
ST. PAUL, MINNESOTA

INDUSTRIAL TRACK AGREEMENT

**COPY**  
*Schilling Mt 9-1*

Parties AGREEMENT, made this 15th day of September, 1971,  
between BURLINGTON NORTHERN INC., a Delaware corporation, hereinafter called  
"Railroad," and KOERNER WALDORF CORPORATION, a Delaware corporation, hereinafter  
called "Industry":  
*d.c.e.*

Location WHEREAS, Industry desires the continued maintenance and operation of trackage  
hereinafter called "track" located at Schilling, Montana, shown colored solid  
green and solid red on the plat hereto attached, marked Exhibit "A", and by  
this reference made a part hereof.

NOW THEREFORE, the parties hereto agree to the continued maintenance and  
operation of said track on the following terms and conditions:

Right of Way

Section 1. Industry shall first procure and furnish without expense to  
Railroad all necessary right of way, including all necessary public author-  
ity and permission for the maintenance and operation of the track.

Industry further agrees that said track shall be maintained and operated  
subject to all provisions of any such public authority or permission and,  
regardless of the fact that same may be granted to Railroad rather than to  
Industry, to assume any and all liability for and to indemnify, defend and  
save harmless Railroad from and against any and all loss, cost, damage, suit  
or expense in any manner arising or growing out of compliance with or violation  
of the provisions of such public authority or permission.

If separation of the grade of said track and of any highway is ordered  
by public authority, the Industry shall indemnify Railroad against any  
expense in connection therewith or consent to the removal of the track.

Construction,  
Ownership and  
Maintenance

Section 2. (a) Railroad will maintain track shown colored solid red on  
Exhibit "A" at its expense and will maintain track shown colored solid green  
on Exhibit "A" at expense of Industry.

(b) Railroad will own the track shown colored solid red on  
Exhibit "A" and Industry will own the track shown colored solid green on  
Exhibit "A".  
*gjk*

Industry shall pay for all present and future changes in or additions  
to Railroad's line made necessary by the continued existence and operation  
of the track.

Industry shall pay to Railroad from time to time the cost of maintenance,  
additions and betterments, done by Railroad, herein agreed to be borne by  
Industry, within twenty (20) days after bills are rendered therefor.

Should Industry do any work of construction, maintenance, or of additions  
and betterments, it shall do such work in substantial and workmanlike manner,  
and in accordance with Railroad's standards. If Industry fails to properly  
maintain the track or to pay the bills therefor within the prescribed time,  
Railroad may refuse to operate over it.

Definition  
of Cost

Section 3. "Cost" for the purpose of this agreement shall be actual  
labor and material costs including all assignable additives. Material and  
supplies shall be charged at current value where used. Rental for equip-  
ment shall be on a non-profit basis to Railroad.

Clearances

Section 4. Industry shall not place, or permit to be placed, or to  
remain, any material, structure, pole or other obstruction within 8-1/2  
feet laterally of the center or within 23 feet vertically from the top of  
the rail of said track; provided that if by statute or order of competent  
public authority greater clearances shall be required than those provided  
for in this Section 4, then Industry shall strictly comply with such statute  
or order. Industry agrees to indemnify Railroad and save it harmless from  
and against any and all claims, demands, expenses, costs and judgments

arising or growing out of loss of or damage to property or injury to or death of persons occurring directly or indirectly by reason of any breach of the foregoing or any covenant contained in this agreement.

**Public  
Assessments**

Section 5. Industry shall pay all compensation and assessments required at any time by a municipality, public authority, corporation or person for the privilege of maintaining and operating said track.

**Liability**

Section 6. Industry agrees to indemnify and hold harmless Railroad for loss, damage or injury from any act or omission of Industry, its employees, or agents, to the person or property of the parties hereto and their employees, and to the person or property of any other person or corporation, while on or near said track, and if any claim or liability shall arise from the joint or concurring negligence of both parties hereto it shall be borne by them equally.

**Assignment**

Section 7. Industry shall not assign this agreement or any interest therein without the written consent of Railroad, and for any departure in this respect Railroad may terminate this agreement.

**Right to  
Disconnect  
Track**

Section 8. Railroad shall be privileged to discontinue the maintenance and operation of said track, and to remove its turnout connection and track shown in red on Exhibit "A" in the event Industry shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

**Joint Use  
by Other  
Railroads**

Section 9. This agreement is also made for the benefit of such other railroads who, either by prior understandings or agreements with the Railroad have the right to use the track, or who shall be admitted in the future to the use of the track by Railroad, all of which railroads shall be deemed the "Railroad" within the meaning hereof.

Section 10.(a) Inasmuch as Industry desires to do its own intraplant switching at the plant to be served by the track covered by this agreement by means of its own locomotive, Railroad hereby grants to Industry the right to run its own locomotives, manned by its own crews, over the portion of the track owned by Railroad shown colored solid red on Exhibit "A". Railroad nevertheless shall have access to the track for the purpose of delivering to and receiving from Industry loaded and empty cars.

(b) Industry shall cause any locomotive operated by it on the track covered by this agreement to be equipped, maintained and operated in all respects in strict accordance with the statutes of the United States commonly known as the Locomotive Inspection Act of February 17, 1911, as amended, and the Safety Appliance Act, and all valid orders of the Interstate Commerce Commission or other public authority thereunder; and Industry shall indemnify and hold harmless Railroad from and against any and all loss, cost, or expense, including penalties, which may result by reason of the failure of Industry to comply strictly with this covenant. The privilege granted to Industry pursuant to Paragraph (a) of this Section is granted without compensation to Railroad and for the accommodation of Industry, and in consideration therefor Industry agrees to assume and bear and to indemnify and save harmless Railroad against all claims, liabilities, costs and expenses for loss, damage or injury to the person or property of the parties hereto and their employees and to the person and property of any other person or corporation in any manner resulting from the use on the track owned by Railroad, covered by this agreement, of any locomotive of Industry, however the same may be caused, and regardless of any negligence of Railroad causing or contributing to the same, including collisions between the cars and engines of Railroad and any locomotive of Industry.

Section 11. Burlington Northern Inc. is successor in interest by merger to Northern Pacific Railway Company and Hoerner-Waldorf Corporation is successor in interest to Waldorf Paper Products Company of Montana, Waldorf-Hoerner Paper Products Company, Inc. and Hoerner Waldorf Corporation of Montana, and those certain industrial track agreements dated July 15, 1957 between the Northern Pacific Railway Company and Waldorf Paper Products Company of Montana; June 13, 1961 between the Northern Pacific Railway Company and Waldorf-Hoerner



Paper Products Company, Inc.; March 12, 1969 between the Northern Pacific Railway Company and Hoerner Waldorf Corporation of Montana; and December 7, 1970 between the Burlington Northern Inc. and Hoerner-Waldorf Corporation covering the construction, maintenance, operation, ownership and use of a portion of the track shown on Exhibit "A" are hereby canceled and terminated.

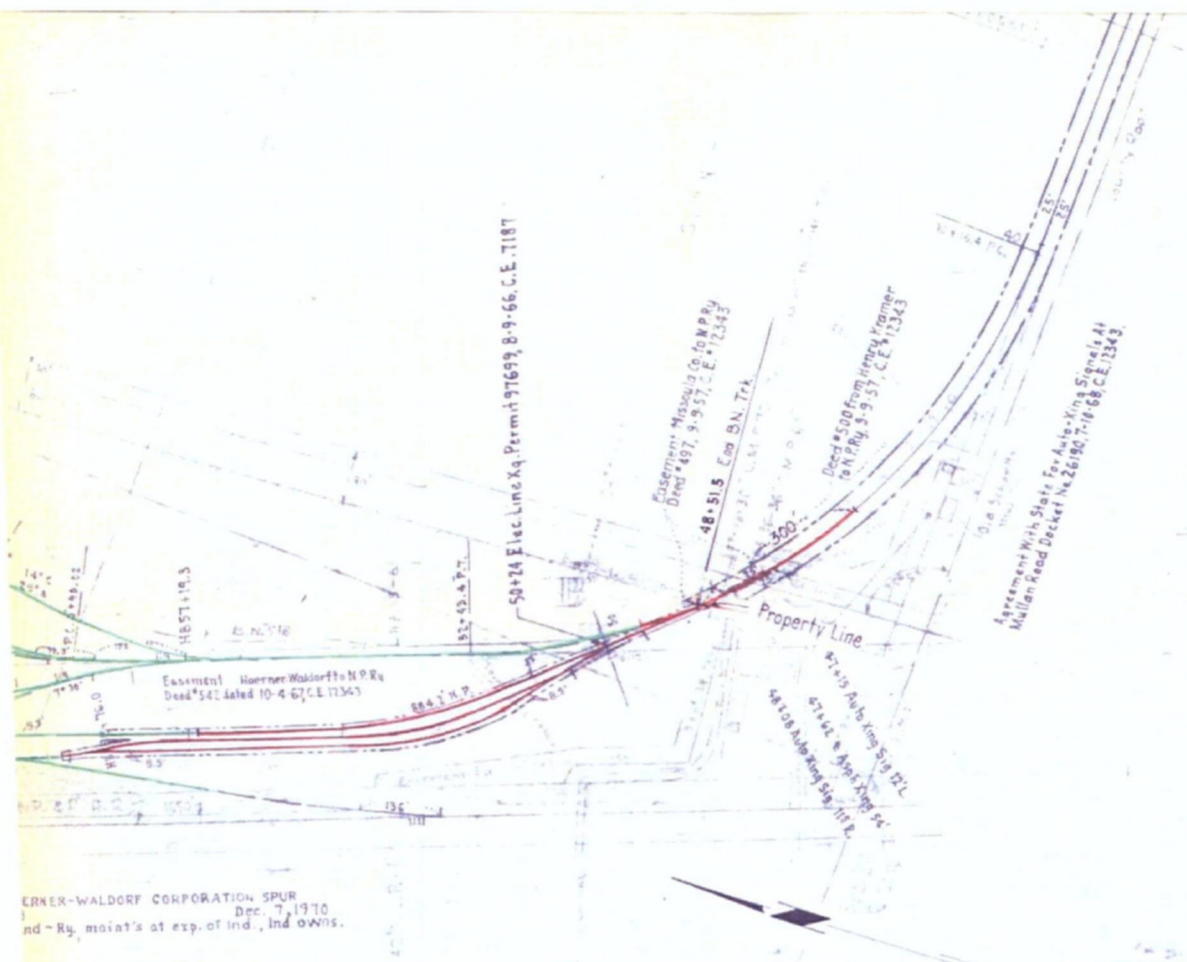
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers thereunto duly authorized the day and year first above written.

BURLINGTON NORTHERN INC.

By *[Signature]*  
Vice President,

HOERNER WALDORF CORPORATION

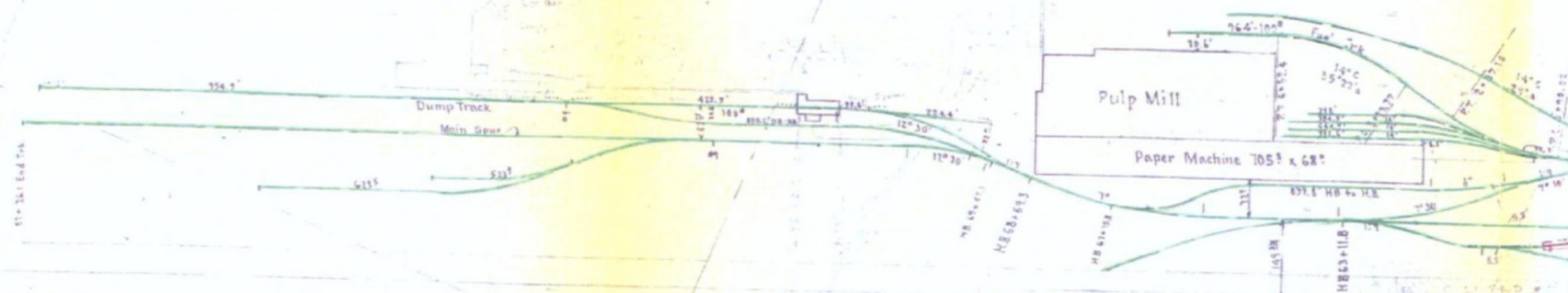
By *L. M. Carson*  
Title: *Sr. Vice Pres.*



HOERNER-WALDORF CORPORATION SPUR  
Dec. 7, 1970  
nd - Ry. maint's at exp. of ind., ind owns.

EXHIBIT "A"  
BURLINGTON NORTHERN INC.  
Track Serving  
HOERNER - WALDORF CORP.  
at

SCHILLING, MONT.  
Scale 1"=200'  
Engineering Division August 27, 1971  
St. Paul, Minn



HOERNER-WAL  
B.N.#510  
H&A to End - Ry. inc



Contract No. 1690

Secretary's Docket No. 10115

AFE or RFA Number \_\_\_\_\_

Date February 14, 1986

*Schilling 7th  
Station file*

TO: SECRETARY'S OFFICE, BURLINGTON NORTHERN RAILROAD COMPANY, FT. WORTH, TEXAS

**cancellation**

Herewith for filing is ~~original and one copy~~ of agreement between Burlington Northern Railroad Company and

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.

dated Feb 15, 1979 covering joint use of 1805 TF to serve Champion International

(Type of contract, i.e., spur track, highway, joint facility, etc. If the agreement is a supplement or termination, please refer to original contract or docket number and date of original contract.)

at Schilling, Montana

Location (City, State)

Contract expiration or term: \_\_\_\_\_

**SUBMITTED BY:**

Operating

Department

Superintendent

Title

**COPIES TO:**

Sr. Vice President, Maintenance and Transportation

Vice President, Accounting

Vice President, Sales and Property Management

Vice President, Intermodal

Vice President & General Manager \_\_\_\_\_ Region

Division Superintendent Rocky Mountain Division

Assistant Vice President, Engineering

NOTE: Enclosed sufficient supply of exhibit prints for use in distribution of contract.

GN 10115 Shilling-9-1 11-13-

THIS AGREEMENT, made and entered into as of the 13th day  
of November, 1978, by and between STANLEY  
E. G. HILLMAN, as TRUSTEE of the property of the CHICAGO,  
MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR  
hereinafter called the "Milwaukee", and the BURLINGTON  
NORTHERN INC. hereinafter called "Burlington".

WITNESSETH:

WHEREAS, the Parties hereto own and operate certain tracks  
which serve the Champion International Corp. - Hoerner  
Waldorf Division at Schilling, Montana; and

WHEREAS, each Party desires the right to use certain of such  
Party's tracks for the sole purpose of effecting delivery  
and receipt of loaded and empty cars to the Champion Inter-  
national Corp. - Hoerner Waldorf Division; and

WHEREAS, the Parties hereto are willing to grant such rights  
upon conditions herein set forth.

NOW THEREFORE, it is agreed by the Parties hereto as follows:

1. Milwaukee shall grant to Burlington the use of its  
track "C-D" approximately 1,805 feet in length; and Burlington  
shall grant to Milwaukee use of its track "A-Z," approximately  
1,805 feet in length, as designated on print dated July 11, 1978,  
marked Exhibit "A," attached hereto, and made a part hereof,  
for the sole purpose of effecting delivery and receipt of

loaded and empty cars <sup>and from</sup> to the Champion International Corp. -  
Hoerner Waldorf Division. Neither Party shall use the  
tracks of the other, pursuant to this agreement, for other  
than effecting delivery and receipt of cars <sup>and from</sup> to/Champion  
International Corp. - Hoerner Waldorf Division as provided  
herein.

2. The Parties hereto agree, each with each other, to  
maintain, repair and renew its tracks, at its own sole cost  
and expense.

3. Neither Party shall use any trackage of the other  
Party in such a manner as to interfere unreasonably with the  
use thereof by the other Party. Each Party, in placing or  
leaving cars hereunder, shall place or leave such cars in  
such position as not to obstruct or interfere unreasonably  
with the operation or use of any other trackage.

4. Each Party undertakes and agrees, in respect to  
its use of trackage and the operation of equipment and  
appliances thereon and thereover, to comply with all applicable  
Federal and State laws or regulations, and all applicable  
rules, regulations and orders promulgated by any Municipality,  
Board or Commission. If any failure by a Party to comply  
with such regulations, laws and rules shall result in any  
fine, penalty, cost or charge being assessed, imposed or  
charged against the other Party, the offending Party agrees  
promptly to reimburse and indemnify the other Party for or  
on account of such fine, penalty, cost or charge; and further  
agrees in the event of any such action, upon notice thereof  
being given by such other Party, to defend such action free  
of cost, charge and expense to the other Party.

In the event the use of trackage in effecting delivery and receipt of cars shall be interrupted or traffic delayed at any time from any cause, neither Party shall have any claim against the other for liability on account of loss or damage of any kind resulting from such interruption or delay.

5. As between the Parties hereto, responsibility for all costs, expenses and liabilities for death, personal injury, or property damage resulting from a wreck, derailment, or other accident which occurs during the course of the operations contemplated by this Agreement, shall be determined as follows:

(a) Burlington shall be responsible, without regard to negligence, for the consequences of any wreck, derailment, or other accident involving a train, engine, car or other rolling stock being moved by Burlington or involving an employee of Burlington which is caused by the condition of track or roadbed or by the condition of equipment appurtenant thereto, or by the condition of engines, cars, or other rolling stock being moved by Burlington.

(b) Milwaukee shall be responsible, without regard to negligence, for the consequences of any wreck, derailment, or other accident involving a train, engine, car or other rolling stock being moved by Milwaukee or involving an employee of Milwaukee which is caused by the condition of track or roadbed or by the condition of equipment appurtenant thereto, or by the condition of engines, cars, or other rolling stock being moved by Milwaukee.

(c) Except as provided above, Burlington shall be responsible for the consequences of any wreck, derailment or other accident resulting solely from the negligence of Burlington, or resulting solely from the negligence of Burlington concurring with the negligence of a person or corporation not a party to this Agreement.

(d) Except as provided above, Milwaukee shall be responsible for the consequences of any wreck, derailment or other accident resulting solely from the negligence of Milwaukee, or resulting solely from the negligence of Milwaukee concurring with the negligence of a person or corporation not a party to this Agreement.

(e) Except as provided above, Burlington and Milwaukee shall be jointly responsible for the consequences of any wreck, derailment or other accident resulting from their joint and concurring negligence, whether or not concurring with the negligence of a person or corporation not a party to this Agreement, and shall bear equally all loss, cost, expense or liability resulting from such wreck, derailment or other accident.

(f) If a derailment occurs during a movement subject to this Agreement, the Party on whose tracks the derailment occurs will clear the derailment unless otherwise mutually agreed to by the Parties.

(g) Each Party hereto, for the liability imposed upon it by this Section 5, shall indemnify and hold the other Party wholly harmless.



6. Either Party may waive any default of the other at any time without affecting or impairing any right arising from any other default.

7. This Agreement shall inure to the benefit of and bind each Party, its successors and assigns.

8. THIS AGREEMENT shall take effect as of the date hereinabove written and shall continue in force and effect until terminated by either Party serving at least 30 days' notice upon the other Party hereto in writing of intention to terminate the same. However, in the event of default by either Party, this Agreement shall terminate upon 30 days' notice to the defaulting Party if said default is not cured in said 30 days. No termination of this Agreement shall release either Party hereto from any liability or obligation that may have been incurred by or that may have accrued against it hereunder during the term hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

STANLEY E. G. HILLMAN as TRUSTEE  
of the property of the  
CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, DEBTOR

ATTEST:

ATTEST:

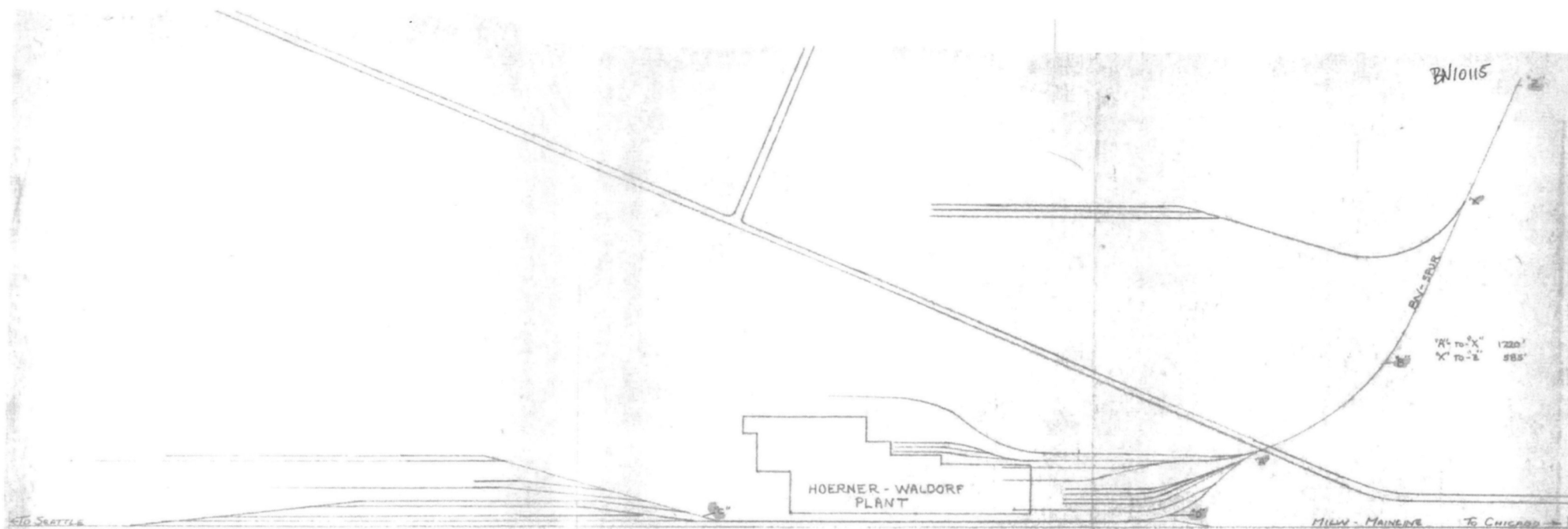
By

  
ASSISTANT VICE PRESIDENT  
BUDGETING & PLANNING  
BURLINGTON NORTHERN INC.

By

  
Asst VP Operations

  
Genl Secretary



MILW TO OPERATE ON BN "A-2"  
 BN TO OPERATE ON MILW "B-1"  
 BOTH 1905'

# EXHIBIT "A"

ENGINEERING DEPARTMENT C.M. & P. & F. R. CO.  
 PLAT SHOWING SKETCH SHOWING  
 PROPOSED RAILROADS OF  
 TRACKS ROUTES - MILW - BN  
 CITY  
 COUNCIL BLUFFS IOWA  
 SCALE NO. 10000 FEET PER INCH  
 NORTH ARROW  
 JULY 11, 1918  
 A. E. E. No. 5155-5

BN 10115